Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Biennial Regulatory Review --	)	WT Docket No. 98-20
Amendment of Parts 0, 1, 13, 22, 24,	)	
26, 27, 80, 87, 90, 95 and 101 of the	)	
Commission's Rules to Facilitate the	)	
Development and Use of the Universal	)	
Licensing System in the Wireless	)	
Telecommunications Services	)	

REPLY COMMENTS OF GTE SERVICE CORPORATION

Dated: June 8, 1998

GTE Service Corporation and its affiliated
domestic telephone operating companies

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SUMMARY

Like GTE, several commenters in the Commission's ULS proceeding asked the FCC to revise or clarify aspects of the proposed rules. Thus, in addition to the rule changes proposed by GTE in its initial comments, GTE supports several rule changes suggested by other parties.

First, GTE supports proposals by BellSouth, AirTouch, and others to eliminate requirements that will increase the filing burdens or fees on wireless carriers. Such proposals should not be adopted without a showing that the need for the requirement justifies the additional burden or cost.

Second, GTE agrees with the many parties that asked the FCC to be more deliberate in mandating ULS filing. GTE agrees that a transition period of at least one year should be adopted to allow system bugs to be removed and to allow parties to become familiar with the ULS.

Third, GTE supports BellSouth's suggestion that the FCC allow carriers to update ownership information annually. Given the frequency of changes in the officers and directors of corporations, the requirement to notify the FCC each time a change occurs is unnecessarily burdensome.

Fourth, GTE joins BellSouth in asking the FCC to eliminate the requirement that licensees file an environmental assessment for facilities located in a floodplain. In cases where a community participates in the National Flood Insurance Program ("NFIP") administered by the Federal Emergency Management Agency ("FEMA"), and where a licensee obtains all required local community approvals, the FCC can be

assured that the facility will not present a significant risk of injury to life or property in the event of a flood.

Fifth, GTE agrees with SBC Corporation that the Commission must clarify Section 22.352 of its rules to state that interference protection exists even if a cellular carrier does not notify the FCC of the existence of an internal transmitter. Requiring prior notification of a site as a prerequisite for interference protection runs counter to previous FCC decisions and could not have been intended by the Commission.

Sixth, GTE supports Bell Atlantic Mobile's ("BAM") request that the FCC clarify whether changes in a carrier's service area boundary are "major" modifications. GTE also supports BAM's proposal that the FCC amend the cellular rules to allow cellular licensees to make changes in their CGSA's without notifying the FCC.

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REPLY COMMENTS OF GTE SERVICE CORPORATION

GTE Service Corporation and its affiliated domestic telephone operating and wireless telecommunications companies[1] (collectively "GTE"), respectfully submit these reply comments in response to the *Notice of Proposed Rulemaking ("NPRM")* issued by the Federal Communications Commission ("FCC" or "Commission") in the above-

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[1] GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Hawaiian Tel International Incorporated, GTE Communications Corporation, GTE Wireless Incorporated and GTE Airfone Incorporated.

captioned proceeding.[2] In the *NPRM*, the Commission proposes to consolidate, revise and streamline its rules governing application procedures for radio services licensed by the Wireless Telecommunications Bureau ("WTB").

GTE filed comments in this proceeding on May 22, 1998. GTE generally supported the Commission's efforts to streamline its wireless license application rules and to remove unnecessary or duplicative requirements. GTE noted, however, that some of the FCC's proposals require clarification, result in unintended, more burdensome reporting requirements, or otherwise needed of revision.

Like GTE, several other parties asked the FCC to revise or clarify aspects of the proposed rules. In addition, some parties suggested other means by which the FCC should consider streamlining its rules to eliminate unnecessary requirements. In these reply comments, GTE indicates its support for several of the suggestions raised by other commenters.

I. DISCUSSION

A. The Commission Should Eliminate Any Proposal that Will Increase the Burdens or Fees for Wireless Carriers.

In its comments, BellSouth cites several examples of proposals that require carriers to submit information on a different form or in a different format. These proposed changes, BellSouth indicates, will trigger application of a new or increased

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[2] Biennial Regulatory Review -- Amendment of Parts 0, 1, 13, 22, 24, 26, 27, 80, 87, 90, 95 and 101 of the Commission's Rules to Facilitate the Development and Use of the Universal Licensing System in the Wireless Telecommunications Services, *Notice of Proposed Rulemaking*, WT Docket No. 98-20, FCC 98-25 (released March 18, 1998).

filing fee for wireless carriers. In particular, BellSouth notes that requiring carriers to file certain minor amendments and license cancellations using ULS rather than filing by letter will result in fees not previously imposed on wireless carriers.[3] BellSouth urges the FCC not to impose additional fees on carriers as a result of transition to ULS and argues that the FCC lacks authority to increase fees in this manner.[4]

Similarly, AirTouch complains that the Commission's proposals to re-impose the requirements that microwave licensees certify completion of construction and to require licensees to notify the Commission when pro-forma license transfers of control or assignments are consummated increase the burdens faced by wireless carriers. AirTouch argues, further, that these proposals run contrary to the Commission's streamlining efforts in this proceeding and would increase carrier filing fees.[5]

GTE agrees with these and other parties that the Commission's actions in this proceeding should not increase filing fees or re-impose unnecessary filing requirements. As the Commission is fully aware, wireless carriers today face enormous competitive pressures. Competition has forced every wireless carrier to find ways to lower the cost of doing business. At a time when carriers are trying to move cost out their networks, the FCC should not adopt proposals that increase carrier costs without substantial evidence that the benefit provided by the new requirement justifies the cost.

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[3] Similarly, SBC Corporation notes that requiring carriers to update name or address changes through the ULS could result in tens of thousands of dollars in unnecessary fees. SBC Corporation Comments at 15-16.

[4] BellSouth Comments at 2-4.

[5] AirTouch Comments at 5.

In the case of the proposals identified by BellSouth and AirTouch, the FCC has not made this showing. These proposals are especially troubling given that they have been proposed in the context of a proceeding designed to simplify FCC filing procedures, streamline FCC rules and procedures, and eliminate unnecessary requirements.

B. The Commission Should Adopt a Transition Period Prior to Mandating ULS Filing.

A substantial number of commenters expressed concerns regarding the Commission's proposal to require mandatory ULS filing by January 1, 1999. Commenters generally state that many bugs in the ULS have and will be found. These problems, they argue, must be eliminated before mandatory electronic filing is imposed. Accordingly, commenters suggest that the Commission either delay implementation of the ULS, or adopt a lengthy transition period during which time either paper or electronic filings will be accepted.[6]

GTE supports adopting a transition period for the ULS. GTE believes that, for at least one year after the ULS is implemented, parties should be allowed to choose to file either electronically using the ULS or in paper form. GTE believes that a transition period will enable the Commission to detect and eliminate any problems in either the ULS or the new forms employed in the system. GTE also believes a transition period

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[6] *See, e.g.,* ADT Security Services Comments at 2-5, AirTouch Comments at 3-4, Alarm Industry Communications Committee Comments at 2-5, American Mobile Telecommunications Association Comments at 3-4, BellSouth Comments at 7-9, Century Telephone Comments at 2-5, FCBA Comments at 7-9, Radiofone Comments at 1-3, WinStar Comments at 3-5.

will benefit FCC licensees by enabling them to prepare their internal systems to file electronically and to experiment with the ULS.

C. Carriers Should Be Allowed to Update Ownership Information Annually.

In its comments, BellSouth proposed that the Commission clarify its proposed rules so that a licensee will not have to update its FCC Form 602 ownership information each time the composition of its officers and directors changes. Rather, BellSouth recommends that the FCC require carriers only to update this information on an annual basis. Each time a licensee files an application, therefore, it would be able to cross reference the Form 602 information on file, even if that information has changed, so long as the form has been updated within the last year and provided that no other changes have occurred that would trigger filing a revised Form 602.[7]

GTE believes that BellSouth's recommendation makes sense and should be adopted. As BellSouth indicates, it is not uncommon for large, publicly held corporations and start-up corporations to change officers and directors frequently. Requiring licensees to report these changes each time they occur would be unnecessarily burdensome and costly.

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[7] BellSouth Comments at 14-15.

D. The Commission Should Not Require an Environmental Assessment for Facilities Constructed in a Floodplain Where All Local Approvals Have Been Obtained and the Facility Meets the Federal Emergency Management Agency's National Flood Insurance Program Requirements.

The FCC's rules implementing the National Environmental Policy Act of 1969 ("NEPA") identify major actions likely to have a significant environmental effect. Among those actions considered "major" is construction of a communications facility in a floodplain.[8] BellSouth proposes that, as part of the Commission's effort to streamline its rules, the FCC should eliminate unnecessary regulation of wireless sites located in a floodplain.[9]

In particular, BellSouth argues that the FCC should not consider locating a facility in a floodplain to be a major action requiring an environmental assessment ("EA"). BellSouth contends that other less restrictive means are available to minimize the impact of floods on human safety and to reduce the risk of loss due to floods. It proposes that if a community participates in the National Flood Insurance Program ("NFIP") administered by the Federal Emergency Management Agency ("FEMA"), and if all required local community approvals are obtained, then no EA should be required.[10]

As BellSouth indicates, to participate in the NFIP a community must implement management plans and regulations consistent with federal guidelines. The NFIP/FEMA

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[8] As such, facilities to be constructed in a floodplain generally require the preparation and filing of an environmental assessment. *See* 47 C.F.R. § 1.1307(a)(6).

[9] BellSouth Comments at 19-24.

[10] BellSouth Comments at 22-24.

regulations generally require newly constructed or substantially improved structures to be elevated or otherwise flood-proofed in order to minimize the effects of floods on life and property. BellSouth contends that compliance with local requirements established in accordance with the NFIP will satisfy goals established in the NEPA and obviate the need for EAs for sites constructed in a floodplain.[11]

GTE supports BellSouth's recommendations with respect to the environmental concerns posed by communications facilities constructed in a floodplain. GTE operates communications facilities located in floodplains in communities participating in the NFIP. Prior to constructing these facilities, in order to obtain the local zoning and construction approvals necessary, GTE has had to comply with NFIP regulations and propose to construct the facility in a manner that will minimize the impact of a flood on life, property, and the environment. Having complied with these requirements at the local level, GTE shares BellSouth's belief that such facilities do not need and should not require an EA to be submitted to the FCC. Accordingly, GTE believes the rule change recommended by BellSouth is warranted and should be adopted.

E. The Commission Should Not Make Interference Protection for Internal Public Mobile Service Transmitters Conditioned upon FCC Notification.

The FCC proposes in the *NPRM* to retain the requirement that Part 22 licensees, including cellular carriers, notify the FCC of additional or modified transmitters as a

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[11] *Id.*

prerequisite to obtaining protection from interference.[12] SBC Corporation asks the FCC to modify the proposed revision of Section 22.352(c)(6). It argues that this section stands in contrast to the FCC's long-standing policy of providing frequency protection by geographic license. Moreover, SBC Corporation questions how carriers are supposed to protect internal cellular sites from interference in light of the Commission's 1994 decision to eliminate reporting requirements for transmitters that do not affect a carrier's CGSA (internal cell sites).[13]

GTE agrees with SBC Corporation that Section 22.352(c)(6) of the Commission's Rules must be revised. GTE believes, however, that a clarification of this rule may be all that is necessary. Section 22.352(c)(6) was adopted as part of the FCC's Part 22 Rewrite Proceeding. In that proceeding, the FCC decided to eliminate the requirement that carriers seek prior FCC approval for or otherwise notify the Commission of modifications to or additions of internal cell sites.[14] In reaction to the Commission's initial proposal, however, several commenters expressed concerns that facilities for which no notification was submitted would not receive *direct* protection from interference. In response to these concerns, the FCC stated that it did not believe

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[12] 47 C.F.R. § 22.352(c)(6). The FCC proposes to revise the existing rule only to substitute new Form 601 for old Form 489. *NPRM* at E-11.

[13] SBC Corporation Comments at 12. The FCC eliminated the need to notify the Commission of new or modified internal cell sites in its proceeding to revise Part 22 of its rules. Revision of Part 22 of the Commission's Rules Governing the Public Mobile Services, *Report and Order*, CC Docket No. 92-115, 9 FCC Rcd 6513, 6518-6519 (1984) ("*Part 22 Rewrite Order*").

[14] *Id.*, at 6518-6519.

internal cell sites would be subject to interference because they would be protected by surrounding stations on the same channel or channel block.[15] Nonetheless, the FCC also decided to allow licensees to notify the FCC of a new transmitter or modification in order to be *directly* protected from interference.[16]

The language of Section 22.353(c)(6) appears to depart from the stated intention of the Commission in adopting the requirement. While the language in the rule states that no interference protection will exist without notification, the Commission explained in the *Part 22 Rewrite Order* that notification is only required to "directly" protect carriers from interference. The FCC did not define what was meant by "direct" interference. The Commission did, however, state that without information regarding the existence and location of a particular transmitter, the FCC would not have sufficient information to determine whether a proposed new facility would interfere with the existing cellular transmitter.[17] GTE does not interpret this language to mean that no interference protection exists without notification, but only that the FCC cannot directly enforce the interference protection rules with respect to a particular facility without notification that

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[15] *Id.*, at 6519 (¶ 26). GTE notes that the Commission's statements with respect to the prospect of interference to internal cell sites have not proved correct. The proposal of AirCell, Inc., an experimental FCC licensee proposing to provide air-ground service over cellular frequencies, for example, presents issues of harmful interference to transmitters located throughout a licensee's CGSA. *See* Petition, Pursuant to Section 7 of the Act, For A Waiver Of The Airborne Cellular Rule, Or In the Alternative, For A Declaratory Ruling Commission, DA 97-2309 (filed October 9, 1997).

[16] *Id.*

[17] *Id.*

the facility exists. GTE presumes that if the licensee chooses not to provide the FCC with prior notification of the facility, the licensee would still be protected so long as the licensee, upon learning of the proposal to construct a new, interfering facility, notifies the Commission of the existence and location of the internal transmitter.

GTE believes that Commission must clarify the nature of the interference protection afforded to internal transmitters and what, if anything, must be done to perfect that protection. If GTE has correctly read and interpreted the FCC's intentions in adopting Section 22.252(c)(6), then all the Commission need do is clarify the rule to state that interference protection exists regardless of FCC notification.

If, however, the Commission intended that no protection exists absent notification, then GTE agrees with SBC that the rule must be revised. Such a requirement, as SBC notes, would largely negate the effect of the Commission's decision to eliminate reporting requirements for internal cell sites. Indeed, in this case, in order to obtain frequency protection for internal sites, carriers would be required to submit information that the FCC previously stated was "not needed by the Commission staff, other licensees or the public."[18] In addition, this interpretation would result in a rule that no interference protection exists for internal cellular facilities, a result GTE doubts the FCC intended.

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[18] *Id.*, at 6518 (¶ 22).

F. The Commission Should Amend Its Cellular Rules So That Adjustments to a Cellular Geographic Service Area Are Not Considered Major Modifications.

In its comments, Bell Atlantic Mobile ("BAM") notes that the *NPRM* is not clear regarding whether a change in the service area of a licensee providing a service licensed on a geographic area basis would constitute a major modification. BAM also notes that FCC Rules applicable to cellular and personal communications service ("PCS") providers treat changes in a service area contour differently. Cellular providers, it points out, must treat any change in a system's cellular geographic service area ("CGSA") as a major modification, while broadband PCS providers have no defined service areas comparable to the CGSA and are not subject to this requirement. In order to end this disparate treatment and clarify the ambiguity in the proposed rules, BAM asks the Commission to rule that modifications to the service areas of systems licensed on a geographic area basis are not major modifications.[19]

GTE agrees with BAM that the Commission should cease treating changes to a cellular licensee's CGSA as a major modification. GTE understands that the current cellular rule has some historical purpose. In particular, the FCC's Rules treat unserved area differently in the cellular context -- making such area subject to unserved area applications at the end of the original licensee's build-out period. Accordingly, to enable potential unserved area applicants to determine whether any unserved area existed at the expiration of the build-out period, cellular licensees were required to notify the Commission of all changes that affected the CGSA. Today, however, almost every

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[19] BAM Comments at 9-10.

cellular licensee's build-out period is expired and cellular systems are largely built-out. As such, there is no longer a need for the current cellular rule regarding changes to the CGSA. Thus, in the name of streamlining the Commission's Rules, eliminating unnecessary requirements, and promoting regulatory parity among cellular and PCS providers, the FCC should adopt BAM's proposal.

II. CONCLUSION

Like GTE, several commenters in the Commission's ULS proceeding asked the FCC to revise or clarify aspects of the proposed rules. Thus, in addition to the rule changes proposed by GTE in its initial comments, GTE supports several rule changes suggested by other. In particular, GTE supports proposals to (1) eliminate requirements that will increase the filing burdens or fees on wireless carriers; (2) establish a transition period prior to requring mandatory electronic filing using the ULS; (3) allow carriers to update ownership information annually; (4) eliminate the requirement that licensees file an environmental assessment for facilities located in a floodplain; (5) clarify that interference protection exists regardless of FCC notfication; and (6) clarify that changes in a cellular carrier's CGSA are not "major" modifications.

Dated: June 8, 1998

Respectfully submitted,

GTE Service Corporation and its affiliated domestic telephone operating companies

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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "Reply Comments of GTE Service Corporation" have been mailed by first class United States mail, postage prepaid, on June 8, 1998 to all parties of record.

Judy R. Quinlan